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Authorizing Abuse

By Morton H. Halperin

WASHINGTON — What do the sugar lobby, Joseph Kraft, the antiwar movement, Daniel Schorr and Spiro T. Agnew have in common?

All of them of course were subject to surveillance by United States intelligence agencies.

These investigations are the kinds of abuses that a comprehensive intelligence "charter" of the type introduced in the Senate with Administration support is designed to prevent.

However, those under surveillance have two other things in common: The investigations were conducted at the direction of a President and they would all be authorized under the proposed national intelligence legislation designed to serve as a charter.

Intelligence reform has often been thought of as a means to curb the tendencies of the intelligence agencies to spy on their fellow Americans. Certainly there have been such abuses, but at least as often the impetus for surveillance has come from the White House.

A primary purpose of a charter must be to provide guidance to the intelligence agencies about what kind of Presidential pressure should be resist-

ed. Congress must tell the intelligence agencies and the President what targets are off-limits in a democratic society.

Whatever its effect on the ability of the Central Intelligence Agency to better analyze foreign events — and most observers think the effects will be minimal — the proposed charter fails dismally in the Presidentially proclaimed objective of preventing abuse.

The charter authorizes the surveillance of Americans and the use of techniques such as wiretaps, burglaries, buggings and what are described as less-intrusive techniques such as infiltrating organizations, using informants, gaining access to records, and physical surveillance in a bewildering variety of circumstances. Together they seem to cover all of the past abuses but by authorizing them rather than prohibiting them.

Consider Joseph Kraft. The noted columnist was in Paris interviewing representatives of Hanoi's Government. The White House wanted to know what they had said to him and did not trust Mr. Kraft to tell them. The Federal Bureau of Investigation was dispatched to bug his hotel room.

Even the Nixon White House knew that this was improper and sought to keep it secret. The National Intelligence Act of 1960 would permit it. The act provides that a judge is to issue a warrant for bugs, wiretaps and burglaries abroad if the President certifies that the information sought is vital to the national security even if the target is doing nothing illegal and has no connection with a foreign power. The new procedure would apply to journalists, businessmen and private citizens.

Take Daniel Schorr. The F.B.I. investigated him at the request of the Nixon White House, which claimed that he was being considered for a job. The proposed bill would authorize such surveillance. Nor were such tactics limited to the Nixon Administration.

Vice President-elect Spiro T. Agnew came under F.B.I. surveillance because President Lyndon B. Johnson thought that he was in league with the Government in Saigon. Such surveillance could be conducted under the proposed charter as an investigation of the unauthorized disclosure of classified information or as an investigation of one engaged in "clandestine intelligence activities."

The antiwar movement could have come under investigation as well in the latter category since "clandestine intelligence activity" is defined to include lawful political activity if it is done for a foreign power and that fact is concealed. Since President Johnson believed that the antiwar movement was controlled by Hanoi, all of those involved in the movement could have come under surveillance lawfully if the "reform" charter were in effect. Moreover, if such activists traveled abroad they could have been wiretapped, bugged or burglarized if the Justice Department was able to persuade a judge that they were acting for Hanoi.

President John F. Kennedy wanted to know what the sugar lobby was doing on behalf of foreign governments to affect sugar quotas. That F.B.I. investigation would be authorized under a provision that permits the use of all but the most intrusive techniques to gather foreign intelligence information from law-abiding citizens in the United States.

Critics of the present charter are not seeking to hamper the C.I.A.'s ability to gather intelligence from foreign sources abroad or to analyze that information. What they do seek are standards for the surveillance of Americans that will prevent abuses of the past and not authorize them. On these grounds, the present draft is an utter failure.

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